Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-399

WILBUR McDONALD,

Petitioner,

vs.

STATE OF ILLINOIS, CITY OF CHICAGO, COUNTY OF COOK, EDWARD V. HANRAHAN, BERNARD M. CAREY, JOSEPH WOODS, RICHARD ELROD, DEPARTMENT OF CORRECTIONS OF COOK COUNTY, DANIEL WEIL, JAMES ROCHFORD, JAMES CONLISK, and WILLIAM ARNOS and GERALD SATERNOS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION OF RESPONDENTS CITY OF CHICAGO, ROCHFORD, CONLISK, ARNOS AND SATERNOS

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STATEMENT

This brief in opposition is presented on behalf of the City of Chicago respondents—the City of Chicago, a municipal corporation, itself, James Rochford and James Conlisk, both former superintendents of the Chicago Police Department, and Chicago patrolmen William Arnos and Gerald Saternos.

The petitioner, Wilbur McDonald, has brought this civil rights action pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the Constitution.

The complaint alleges that the petitioner was arrested by Chicago police officers on July 11, 1970, on suspicion of murder. It is further averred that McDonald was subsequently indicted on a charge of murder, tried on that charge before a jury in the Circuit Court of Cook County, Illinois, and convicted of murder on August 11, 1971. He was sentenced to the penitentiary for 100 to 150 years and was incarcerated there until August, 1973, when another person confessed to the crime. McDonald was granted a new trial and all charges were then nolle prossed. He alleges he later received a full pardon from the Governor of Illinois on the ground of innocence. The complaint declares that McDonald "was unjustly imprisoned from July 11, 1970, to August 15, 1973, a total of three years and 35 days."

However, the involvement of the Chicago Police Department in this chain of events was limited to arresting McDonald on July 11, 1970, and immediately transferring him to the custody of the Sheriff of Cook County. Patrolmen Arnos and Saternos, furthermore, were not the arresting officers. McDonald's grievance against Officers Arnos and Saternos is that they did not

make a report to the police department of an interview they had with him in the park shortly before his arrest by other officers. Petitioner claims he told Arnos and Saternos that he had just been robbed. McDonald argues that if they had reported this, it would have corroborated his alibi.

The district court dismissed petitioner's action on the ground that a municipality is not subject to suit under the Civil Rights Act. *Monroe v. Pape*, 365 U.S. 167, at 187-191 (1961). A motion for summary judgment was also entered in favor of the two former superintendents of police, respondents Rochford and Conlisk, on the ground that the doctrine of respondeat superior has no application between a public officer and his subordinates in the public service, unless the superior officer directs, countenances or cooperates in the tortious act. The district court dismissed the allegations as to respondents Arnos and Saternos as insufficient to state a claim against them.

The court of appeals affirmed this judgment with respect to all the City of Chicago respondents (Petition for Certiorari App., pp. 82, 92, 112, 122, 132).

ARGUMENT

The petition for certiorari filed by Wilbur McDonald fails to assert, argue or even mention that the judgment below is in any way erroneous insofar as relates to the City of Chicago respondents.

The questions presented for review by the petition (pp. 2,3) concern only the State of Illinois.

Rule 23(1)(c) of the Rules of the Court provides:

> "Only the questions set forth in the petition or fairly comprised therein will be considered by the court,"

As Justice Jackson stated in *Irvine v. California*, 347 U.S. 128, at 129,

> "The issues here are fixed by the petition . . ."

The judgments of the district court and the court of appeals with respect to the City of Chicago respondents are obviously correct and the petitioner has tacitly conceded this.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari, insofar as it relates to the City of Chicago respondents, should be denied.

Respectfully submitted,

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